

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVENDRA KUMAR JAIN,

Plaintiff,

-v-

POSTMASTER GENERAL MEGAN J. BRENNAN,
United States Postal Service, New York Metro Area,
Agency,

Defendant.

18 Civ. 4446 (PAE) (SDA)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Currently pending is a motion to dismiss *pro se* plaintiff Devendra Kumar Jain's Second Amended Complaint ("SAC") for lack of subject matter jurisdiction or, in the alternative, to dismiss the SAC in part for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Dkt. 21. Before the Court is the April 25, 2019 Report and Recommendation of the Hon. Stewart D. Aaron, United States Magistrate Judge, recommending that the SAC be dismissed for lack of subject matter jurisdiction with leave to replead, and that the alternative motion to dismiss for failure to state a claim be denied. Dkt. 39 ("Report"). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the

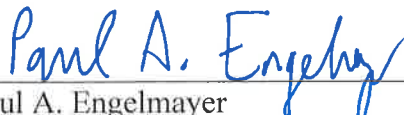
record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Aaron’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that **“THE FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW,”** Report at 14, the parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court grants the motion to dismiss the SAC for lack of subject matter jurisdiction with leave for Mr. Jain to file a Third Amended Complaint to clearly and expressly waive all claims to monetary relief in excess of \$10,000, and denies defendant’s alternative motion to dismiss the SAC in part. The Clerk of Court is respectfully requested to terminate the motion pending at Dkt. 21 and to mail a copy of this decision to Mr. Jain at the address on file.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: July 9, 2019
New York, New York